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Letter dated 27 August 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 21 May 2003 (S/2003/597).

The Counter-Terrorism Committee has received the attached third report from Cuba submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 19 August 2003 from the Permanent Representative of Cuba to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

[Original: Spanish]

I am pleased to transmit to you herewith the responses of the Government of the Republic of Cuba to the questions raised in your letter dated 16 May 2003 concerning the supplementary report of Cuba (S/2002/1093) of 24 September 2002 (see enclosure).

I take this opportunity to reiterate Cuba's willingness to continue cooperating with the Counter-Terrorism Committee of the Security Council.

(*Signed*) Bruno **Rodriguez Parrilla**
Ambassador
Permanent Representative

Enclosure

[Original: Spanish]

Report submitted by the Republic of Cuba to the Counter-Terrorism Committee in response to its questions on the supplementary report of Cuba (S/2002/1093)

1. Please explain whether the powers of the banks to freeze assets have statutory force. If so, please provide an outline of the legal provisions in this regard. Please also indicate whether under the existing provisions of law it is possible to freeze funds, assets etc in Cuba of resident or non resident suspected to be linked to terrorism at the request of another State.

Following the implementation of resolution 91/97 of the Minister-President of the Central Bank of Cuba in 1997, the Cuban banking and financial system has been implementing policy guidelines to prevent and detect illicit capital movements.

To that end, all commercial banks licensed by the Central Bank of Cuba to open accounts for Cuban or foreign individuals or legal persons, irrespective of the place of residence and the transaction effected in or with Cuba, use the internationally recognized concepts of "due diligence" and "know-your-client" as daily tools. The central and provincial branches of the banks monitor compliance with these two concepts, which are set out in each bank's instructions and procedures manual.

Furthermore, the banks that are not authorized to carry out the transactions described in the preceding paragraph have the above-mentioned manuals which contain the regulations established by the Central Bank and tailored to the specific characteristics of each individual bank.

The following main regulations have been in force since 1997:

1. Resolution 91/97;

2. Instructions No. 1, 2, 8, 17 and 18, which supplement and enrich the above-mentioned resolution;

3. Instruction No. 19, issued by the Superintendent of the Central Bank of Cuba in May 2002, established 14 guidelines for the fight against terrorist financing. That Instruction drew on the provisions of Law No. 93 entitled, "Law against acts of terrorism" of 20 December 2001 of the Republic of Cuba; the United Nations Convention for the Repression of Terrorist Financing of 1999; Security Council resolution 1373 (2001) of 28 September 2001; and the eight recommendations of the Organization for Economic Cooperation and Development Financial Action Task Force on Money Laundering of 31 October 2001.

The Bank Supervision Division of the Central Bank is currently working on merging, streamlining and updating instructions No. 1 and No.2 with a view to consolidating in only two instructions all the legislation supplementing Resolution 91/97.

The Central Bank of Cuba has formulated appropriate regulations for freezing any financial or economic assets in a bank account if there is irrefutable evidence

that not only are such assets the proceeds of various kinds of criminal activity but also that they could be used to finance terrorist activities in Cuba or abroad.

The procedure for freezing funds and other financial assets takes in practice 24 hours, running from the date and time of the notice of the order issued by any competent court in Cuba or government attorney. Furthermore, the Cuban justice system has extended the competence of fiscal and security judges to enable them to carry out this process.

As long as there is evidence that irrefutably shows that money-laundering is taking place and that such funds may be used for financing acts of terrorism, irrespective of the nationality and domicile of the individual or legal person holding those funds, banks have the competence to take action to block and freeze such funds.

If, with due regard for the proper procedures and our national legislation, a request is issued by another country for the freezing of funds of non-resident persons and entities supporting terrorism abroad, the Central Bank of Cuba is free to cooperate with such a request. A fully substantiated request shall be submitted to the Central Bank of Cuba, which shall then inform the bank where the person suspected of having terrorist links has his assets to freeze the funds. To date, no financial institution has been penalized. In accordance with the guidelines stipulated by the Bank of Cuba, whenever suspicious transactions have been detected, they have been reported. Prevention compliance officials in branches of each financial institution up to the municipal level play a key role in this process and are responsible for on-site detection of any activity that might give rise to suspicion.

2. At page 18 of the supplementary report it is stated that article 6(3) of the Penal Code provides that foreigners who are prosecuted because they have fought against imperialism, colonialism, neo-colonialism, fascism or racism or because they have defended democratic principles or the rights of the working people shall not be extradited. The CTC would be grateful if Cuba could explain whether this would lead to the rejection of a request from a State to extradite a foreigner found in Cuba who was accused of committing terrorist acts punishable under Law No.93, the Law Against Acts of Terrorism. If such requests are rejected then how would Cuba deal with such perpetrators of terrorist acts that are punishable under the Cuban law?

Since both the Charter of the United Nations and international law recognize the right of peoples to self-determination, the inherent right to self-defence and the right to fight against foreign occupation, those exercising their rights in that regard could never be referred to as terrorists. This is in keeping with the universally recognized principle of not handing over some aliens.

In that regard, Cuba has supported the legitimate demand of a representative group of developing countries to draft an international convention on the issue that would make a clear distinction between terrorism and the struggle of peoples against foreign occupation.

On the other hand Cuba, which has been subjected to continuing terrorist threats over the past 40 years and has unequivocally condemned all acts, methods and practices of terrorism in all its forms and manifestations, wherever and by whomever they may be committed, and has refused to assist or harbour anyone who commits, promotes or is associated with terrorist acts, cannot reject the request of a State to extradite a foreigner accused of terrorist acts such as those provided for by

Cuban criminal legislation or by international conventions to which both Cuba and the requesting State are parties. In such cases, Cuba would comply with the principle of aut dedere aut judicare, unless it felt that the alien whose extradition is sought would not be guaranteed a fair trial or that the evidence did not show that the suspect was involved in the offence charged.

However, Cuba would comply with its duty under its domestic legislation to try those aliens suspected of committing terrorist acts that were planned and perpetrated on Cuban territory, but were committed abroad or vice versa.

3. The CTC is aware that Cuba may have covered some or all of the points in the preceding paragraphs in reports or questionnaires submitted to other organizations involved in monitoring international standards. The CTC would be content to receive a copy of any such report or questionnaire as part of Cuba's response to these matters as well as details of any efforts to implement international best practices, codes and standards which are relevant to the implementation of resolution 1373.

Cuba has indeed included some of the points covered in its previous reports to the Counter-Terrorism Committee published by the Secretariat as documents S/2002/15 (Initial report of Cuba to the CTC) and S/2002/1093 (Supplementary report). Since the two reports are already with the Committee, it is not necessary to annexe copies.